

REMARKS

Claims 5-8 were amended. Support for the amendments can be found throughout the specification, e.g., in paragraphs [0030] and [0039]. New claims 9-12 were added. Support for the new claims can be found throughout the specification, e.g., in paragraph [0017]. Claims 5-12 are now pending. Applicants respectfully submit that no new matter was added in this amendment.

In the Advisory Action mailed February 8, 2007, the Examiner indicated that the terminal disclaimer filed January 17, 2007, overcame the obviousness-type double patenting rejection of claims 5-8 over claims 1-4 of U.S. Patent No. 7,045,355 to Kazuko et al. Accordingly, Applicants submit that the two rejections remaining are: (i) the rejection of claims 5 and 7, as anticipated by U.S. Patent No. 6,417,428 to Thomashow et al.; and (ii) the rejection of claims 6 and 8, as obvious over the Thomashow patent.

In the final Office Action mailed October 31, 2006, the Examiner stated the Applicants' argument that the Thomashow patent "does not describe the idea of introducing CBF genes into the plant together with a stress responsive promoter comprising a DRE region ..." was "not found to be persuasive because the recitation of the promoter in the instant claims is not limited to stress responsive promoter comprising a DRE region." See Office Action, page 3.

In response, independent claims 5, 6, 7, and 8 have been amended, without prejudice, to recite in part "a stress responsive promoter comprising a DRE region," to advance the prosecution of the present application.

Applicants respectfully submit that the Thomashow patent does not teach a transgenic plant "transformed with a DNA that encodes a protein consisting of the amino acid sequence as shown in SEQ ID NO: 8, operably linked downstream of a stress responsive promoter comprising a DRE region" as recited in independent claims 5 and 7, for the reasons articulated in the previous responses. Accordingly, Applicants submit that the Thomashow patent cannot

anticipate claims 5 and 7, as it does not teach each and every element of these claims, and request that the anticipation rejection over the Thomashow patent be removed.

Applicants further submit that the Thomashow patent does not teach or suggest a transgenic plant transformed with a DNA comprising or encoding a protein comprising "the nucleotide sequence as shown in SEQ ID NO: 7, operably linked downstream of a stress responsive promoter comprising a DRE region," as recited in independent claims 6 and 8, for the reasons articulated in the previous responses. Accordingly, Applicants submit that the Thomashow patent cannot render claims 6 and 8 obvious, as it does not teach or suggest each and every element of these claims, and request that the obviousness rejection over the Thomashow patent be removed.

Conclusion

Reconsideration of the present application, as amended, is requested. If, upon review, the Examiner determines that the application is not in condition for allowance, Applicants respectfully request the Examiner to contact the undersigned for a telephone interview before an Office Action is issued in the application. A favorable action on the merits is earnestly solicited.

Respectfully Submitted,
DAVIDSON, DAVIDSON & KAPPEL, LLC

By: _____


Robert J. Paradiso

Reg. No. 41,240

DAVIDSON, DAVIDSON & KAPPEL, LLC
485 Seventh Avenue, 14th Floor
New York, New York 10018
(212) 736-1940